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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1363

Introduced by Assembly Member Jones

**(Principal coauthors: Assembly Members Berg, Canciamilla,
Frommer, Karnette, Liu, Montanez, and Nunez)**

(Principal coauthors: Senators Chesbro and Figueroa)

**(Coauthors: Assembly Members Arambula, Chu, Cohn, Garcia,
Goldberg, Klehs, Koretz, Laird, Leno, Levine, Lieber, Lieu,
Parra, Pavley, Saldana, and Spitzer)**

(Coauthors: Senators Kuehl, Ortiz, and Torlakson)

February 22, 2005

An act to amend Sections 1610, 1822, 1826, 1829, 1830, 1850, 1851, 2215, 2250, 2253, 2320, 2321, ~~2340, 2342, 2343~~, 2401, 2610, 2620, 2620.2, 2623, 2640, 2640.1, 2641, 2653, 2701, ~~2850, 2851, 2852, 2853, 2854, 2855~~, and 2920 of, to add Sections 1456, 1457, 1458, 2113, 2250.1, 2250.2, ~~2250.5~~, and 2410 to, ~~and to repeal Sections 2342.5 and 2344 of~~, the Probate Code, and to add Division

8.7 (commencing with Section 9800) to the Welfare and Institutions Code, relating to conservatorship and guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as amended, Jones. Omnibus Conservatorship and Guardianship Reform Act of 2006.

(1) Existing law governs the establishment of conservatorships and guardianships. ~~Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship. Existing law requires the Department of Justice to maintain a statewide registry of conservators, guardians, and trustees. A court may not appoint a person as a conservator, guardian, or trustee unless that person is registered if he or she is required to do so.~~

~~The bill would remove conservators and guardians from the provisions governing registry, effective January 1, 2008, and require that the registry for trustees be maintained by the Department of Consumer Affairs, rather than the Department of Justice.~~

The bill would require the Judicial Council, among other things, to adopt specified rules of court relating to conservatorships and guardianships and to ~~enact~~ *develop* educational programs for nonlicensed conservators and guardians. The bill would also require the Judicial Council to establish qualifications and educational classes ~~for judges who are regularly assigned to hear probate matters, requirements for any court-employed staff attorney, examiner, and investigator or court-appointed attorney, to require educational classes for these attorneys, probate judges, and public guardians, to establish conservatorship accountability measures, and to develop a form~~ *forms* to provide notice regarding free assistance provided by the court to conservators *and how to file an objection to an inventory and appraisal of the estate. The bill would require each superior court to provide assistance to self-represented nonlicensed conservators and guardians, as specified.*

(2) *Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship.*

~~The bill would also make various changes to provisions governing conservatorship, including requiring~~ *require* an annual, rather than a biennial, review of conservatorships at a noticed hearing, ~~requiring~~

and require conservators and guardians to present an annual, rather than a biennial, accounting, ~~prohibiting~~. The bill also would prohibit a court from reducing the amount of a bond in conservatorship proceedings without good cause, and ~~imposing~~ impose new duties on court investigators with respect to cases involving proposed conservatees, and prohibit the compensation of a guardian or conservator from the estate for costs or fees incurred in unsuccessfully opposing a petition, among other changes.

(3) Existing law authorizes the public guardian to apply for appointment as guardian or conservator of the person, estate, or both, of any person domiciled in the county requiring a guardian or conservator if there is no one else who is qualified and willing to act and whose appointment would be in the best interest of the person. The public guardian is required to apply for appointment if ordered by the court.

This bill additionally would require the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. The bill would require the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interest of the person, as specified.

(4) The bill would establish in the California Department of Aging the Office of Conservatorship Ombudsman to collect and analyze data relative to complaints about conservatorships and to investigate and resolve complaints and concerns communicated by or on behalf of conservatees.

(5) The bill would become operative only if SB 1116, SB 1550, and SB 1716 are enacted and become effective on or before January 1, 2007.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Omnibus Conservatorship and Guardianship Reform Act of
3 2006.

SEC. 2. The Legislature finds and declares the following:

(a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the year 2000, to 6.3 million in the year 2020. The fastest growing segment of California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and 25 percent of the population over 85 years of age will suffer from Alzheimer's disease.

(b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.

(c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee \$1.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.

(d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.

(e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the physical or financial abuse, of the clients professional fiduciaries are supposed to serve. For that reason, it is necessary to create a program to license certain professional fiduciaries in order to protect the public health, safety, and welfare.

(f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.

(g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform.

SEC. 3. Section 1456 is added to the Probate Code, to read:

1456. (a) On or before ~~July 1, 2007~~ *January 1, 2008*, the Judicial Council shall adopt a rule of court that shall do all of the following:

1 (1) Specifies the qualifications of a court-employed staff
2 attorney, examiner, and investigator, and any attorney appointed
3 pursuant to Sections 1470 and 1471.

4 (2) Specifies the number of hours of education in classes
5 related to conservatorships or guardianships that a judge who is
6 regularly assigned to hear probate matters, court-employed staff
7 attorney, examiner, and investigator, public guardian, and any
8 attorney appointed pursuant to Sections 1470 and 1471 shall
9 complete each year.

10 (3) Specifies the particular subject matter that shall be
11 included in the education required each year.

12 (4) Requires a judge who is regularly assigned to hear probate
13 matters, court-employed staff attorney, examiner, and
14 investigator, public guardian, and any attorney appointed
15 pursuant to Sections 1470 and 1471 to certify to the court the
16 completion of the yearly specified hours of education.

17 (b) In formulating the rule required by this section, the Judicial
18 Council shall consult with interested parties, including, but not
19 limited to, the California Judges Association, the California
20 Association of Superior Court Investigators, *the California*
21 *Public Defenders Association*, the California State Association of
22 Public Administrators, Public Guardians, and Public
23 Conservators, ~~the California Bar Association~~ *State Bar of*
24 *California*, the National Guardianship Association, and the
25 Association of Professional Geriatric Care Managers.

26 SEC. 4. Section 1457 is added to the Probate Code, to read:

27 1457. In order to assist relatives and friends who may seek
28 appointment as a nonprofessional conservator or guardian:

29 (a) The Judicial Council shall develop a short educational
30 program of no more than three hours that is user-friendly and
31 shall make that program available free of charge to each
32 ~~conservator or proposed conservator and guardian and each~~
33 ~~court-appointed conservator and guardian~~ who is not required to
34 be licensed as a professional conservator or guardian pursuant to
35 Chapter 6 (commencing with Section 6500) of Division 3 of the
36 Business and Professions Code. The program may be available
37 by video presentation or Internet access.

38 (b) ~~Each probate court shall maintain an office to assist~~
39 ~~superior court shall provide assistance to self-represented~~
40 conservators and guardians who are not required to be licensed as

1 professional conservators or guardians pursuant to Chapter 6
2 (commencing with Section 6500) of Division 3 of the Business
3 and Professions Code. ~~Services of the office~~ *That assistance* shall
4 include providing educational materials to *self-represented*
5 conservators and guardians, distributing necessary court forms,
6 providing assistance in completing forms, and providing referrals
7 to community agencies and resources that provide services for
8 conservators and guardians. These services shall be offered free
9 of charge.

10 SEC. 5. Section 1458 is added to the Probate Code, to read:

11 1458. (a) On or before January 1, 2008, the Judicial Council
12 shall develop conservatorship accountability measures for use by
13 each court. The measures shall include at a minimum:

14 (1) The number of temporary conservatorships requested and
15 the number granted, noting the number of hearings in which
16 notice was waived, the number of hearings in which the proposed
17 conservatee attended the hearing, the number of contested
18 hearings, the number of hearings in which bond was waived, and
19 whether the proposed conservator was a professional
20 conservator, the public guardian, or a person who is not required
21 to register under Chapter 6 (commencing with Section 6500) of
22 Division 3 of the Business and Professions Code.

23 (2) The number of permanent conservatorships requested and
24 the number granted, noting the number of hearings in which the
25 proposed conservatee attended the hearing, the number of
26 contested hearings, the number of hearings in which bond was
27 waived, and whether the proposed conservator was a professional
28 conservator, the public guardian, or a person who is not required
29 to register under Chapter 6 (commencing with Section 6500) of
30 Division 3 of the Business and Professions Code.

31 (3) The number of accountings filed (A) over 30 days late and
32 (B) over 90 days late.

33 (4) The number of cases that required an investigation by the
34 court investigator, the number of cases in which the investigation
35 was timely completed, and the number of cases in which the
36 review was completed, but not timely.

37 (5) The number of cases that required court review, the
38 number of cases in which the court review occurred timely, and
39 the number of cases in which court review was completed, but
40 not timely.

1 (b) Each court shall collect conservatorship accountability data
2 and report that data to the Judicial Council every quarter. The
3 Judicial Council shall report that data annually to the Legislature
4 and the Conservator Ombudsman, and shall post the data on its
5 Web site.

6 SEC. 6. Section 1610 of the Probate Code is amended to read:

7 1610. (a) The Legislature finds and declares that it is in the
8 best interest of children to be raised in a permanent, safe, stable,
9 and loving environment.

10 (b) Unwarranted petitions, applications, or motions other than
11 discovery motions after the guardianship has been established
12 create an environment that can be harmful to children and are
13 inconsistent with the goals of permanency, safety, and stability.

14 SEC. 7. Section 1822 of the Probate Code is amended to read:

15 1822. (a) At least 15 days before the hearing on the petition
16 for appointment of a conservator, notice of the time and place of
17 the hearing shall be given as provided in this section. The notice
18 shall include information about free assistance provided by the
19 court to conservators pursuant to Section 1457 and about the
20 complaint process available through the Conservator
21 Ombudsman established pursuant to Section 9800 of the Welfare
22 and Institutions Code. The notice shall be accompanied by a copy
23 of the petition. The court may not shorten the time for giving the
24 notice of hearing under this section.

25 (b) Notice shall be mailed to the following persons:

26 (1) The spouse, if any, or domestic partner, if any, of the
27 proposed conservatee at the address stated in the petition.

28 (2) The relatives named in the petition at their addresses stated
29 in the petition.

30 (c) If notice is required by Section 1461 to be given to the
31 Director of Mental Health or the Director of Developmental
32 Services, notice shall be mailed as so required.

33 (d) If the petition states that the proposed conservatee is
34 receiving or is entitled to receive benefits from the Veterans
35 Administration, notice shall be mailed to the Office of the
36 Veterans Administration referred to in Section 1461.5.

37 (e) If the proposed conservatee is a person with developmental
38 disabilities, at least 30 days before the day of the hearing on the
39 petition, the petitioner shall mail a notice of the hearing and a

1 copy of the petition to the regional center identified in Section
2 1827.5.

3 (f) The Judicial Council shall, on or before ~~July 1, 2007~~
4 *January 1, 2008*, develop a form to effectuate the notice required
5 in subdivision (a).

6 SEC. 8. Section 1826 of the Probate Code is amended to read:

7 1826. Regardless of whether the proposed conservatee
8 attends the hearing, the court investigator shall do all of the
9 following:

10 (a) Interview the proposed conservatee personally. The court
11 investigator also shall ~~interview the proposed conservatee's~~
12 ~~relatives within the first degree and, if known, close friends. do~~
13 ~~all of the following:~~

14 (1) *Interview the petitioner and the proposed conservator, if*
15 *different from the petitioner.*

16 (2) *Interview the proposed conservatee's spouse or registered*
17 *domestic partner and relatives within the first degree.*

18 (3) *To the greatest extent possible, interview the proposed*
19 *conservatee's relatives within the second degree, as set forth in*
20 *subdivision (b) of Section 1821, neighbors, and, if known, close*
21 *friends, before the hearing.*

22 (b) Inform the proposed conservatee of the contents of the
23 citation, of the nature, purpose, and effect of the proceeding, and
24 of the right of the proposed conservatee to oppose the
25 proceeding, to attend the hearing, to have the matter of the
26 establishment of the conservatorship tried by jury, to be
27 represented by legal counsel if the proposed conservatee so
28 chooses, and to have legal counsel appointed by the court if
29 unable to retain legal counsel.

30 (c) Determine whether it appears that the proposed
31 conservatee is unable to attend the hearing and, if able to attend,
32 whether the proposed conservatee is willing to attend the hearing.

33 (d) Review the allegations of the petition as to why the
34 appointment of the conservator is required and, in making his or
35 her determination, do the following:

36 (1) Refer to the supplemental information form submitted by
37 the petitioner and consider the facts set forth in the form that
38 address each of the categories specified in paragraphs (1) to (5),
39 inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

~~(i) To the greatest extent possible, personally interview the relatives of the proposed conservatee set forth in subdivision (b) of Section 1821 before the hearing.~~

~~(j)~~

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

~~(k)~~

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

~~(l)~~

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

~~(m)~~

(l) Mail, at least five days before the hearing, a copy of the report referred to in subdivision~~(l)~~ (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) The proposed conservatee.

(4) The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to be named in the petition for appointment of the conservator, *unless the court determines that the mailing will result in harm to the conservatee.*

(5) Any other persons as the court orders.

~~(n)~~

(m) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsman.

~~(o)~~

(n) The report required by this section is confidential and shall be made available only to parties, persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

~~(p)~~

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

~~(q)~~

(p) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

1 ~~(r)~~

2 ~~(q)~~ Any investigation by the court investigator related to a
3 temporary conservatorship also may be a part of the investigation
4 for the general petition for conservatorship, but the court
5 investigator shall make a second visit to the proposed
6 conservatee and the report required by this section shall include
7 the effect of the temporary conservatorship on the proposed
8 conservatee.

9 SEC. 9. Section 1829 of the Probate Code is amended to read:

10 1829. (a) Any of the following persons may appear at the
11 hearing to support or oppose the petition:

12 (1) The proposed conservatee.

13 (2) The spouse or domestic partner of the proposed
14 conservatee.

15 (3) A relative of the proposed conservatee.

16 (4) Any interested person or friend of the proposed
17 conservatee.

18 (b) The court shall inform any of the persons set forth in
19 *subdivision* (a) who appear at the hearing about the free
20 assistance provided to ~~court~~ *nonprofessional* conservators
21 pursuant to Section 1457.

22 SEC. 10. Section 1830 of the Probate Code is amended to
23 read:

24 1830. (a) The order appointing the conservator shall contain,
25 among other things, the names, addresses, and telephone
26 numbers of:

27 (1) The conservator.

28 (2) The conservatee's attorney, if any.

29 (3) The court investigator, if any.

30 (b) In the case of a limited conservator for a developmentally
31 disabled adult, any order the court may make shall include the
32 findings of the court specified in Section 1828.5. The order shall
33 specify the powers granted to and duties imposed upon the
34 limited conservator, which powers and duties may not exceed the
35 powers and duties applicable to a conservator under this code.
36 The order shall also specify the following:

37 (1) The properties of the limited conservatee to which the
38 limited conservator is entitled to possession and management,
39 giving a description of the properties that will be sufficient to
40 identify them.

1 (2) The debts, rentals, wages, or other claims due to the
2 limited conservatee which the limited conservator is entitled to
3 collect, or file suit with respect to, if necessary, and thereafter to
4 possess and manage.

5 (3) The contractual or other obligations which the limited
6 conservator may incur on behalf of the limited conservatee.

7 (4) The claims against the limited conservatee which the
8 limited conservator may pay, compromise, or defend, if
9 necessary.

10 (5) Any other powers, limitations, or duties with respect to the
11 care of the limited conservatee or the management of the
12 property specified in this subdivision by the limited conservator
13 which the court shall specifically and expressly grant.

14 (c) An information notice of the rights of conservatees shall be
15 attached to the order. The conservator shall mail the order and
16 the attached information notice to the conservatee and the
17 conservatee's relatives, as set forth in subdivision (b) of Section
18 1821. By ~~July 1, 2007~~ *January 1, 2008*, the Judicial Council shall
19 develop the notice required by this subdivision.

20 SEC. 11. Section 1850 of the Probate Code is amended to
21 read:

22 1850. (a) Except as provided in subdivision (b), each
23 conservatorship initiated pursuant to this part shall be reviewed
24 by the court at a noticed hearing six months after the appointment
25 of the conservator and annually thereafter.

26 (b) Notice of the hearing shall be provided to all persons listed
27 in subdivision (b) of Section 1822.

28 (c) This chapter does not apply to either of the following:

29 (1) A conservatorship for an absentee as defined in Section
30 1403.

31 (2) A conservatorship of the estate for a nonresident of this
32 state where the conservatee is not present in this state.

33 SEC. 12. Section 1851 of the Probate Code is amended to
34 read:

35 1851. (a) When court review is required, the court
36 investigator shall, without prior notice to the conservator *except*
37 *as ordered by the court for necessity or to prevent harm to the*
38 *conservatee*, visit the conservatee. The court investigator shall
39 inform the conservatee personally that the conservatee is under a
40 conservatorship and shall give the name of the conservator to the

1 conservatee. The court investigator shall determine whether the
2 conservatee wishes to petition the court for termination of the
3 conservatorship, whether the conservatee is still in need of the
4 conservatorship, whether the present conservator is acting in the
5 best interests of the conservatee, and whether the conservatee is
6 capable of completing an affidavit of voter registration. In
7 determining whether the conservator is acting in the best interest
8 of the conservatee, the court investigator's evaluation shall
9 include ~~the appropriateness~~ *an examination* of the conservatee's
10 placement, quality of care, including physical and mental
11 treatment, and the conservatee's ~~financial condition~~ *finances*. To
12 the greatest extent possible, the court investigator shall interview
13 ~~the relatives of the conservatee, as set forth in subdivision (b) of~~
14 ~~Section 1821, and his or her neighbors or friends~~ *individuals set*
15 *forth in subdivision (a) of Section 1826*, in order to determine if
16 the conservator is acting in the best interest of the conservatee. If
17 the court has made an order under Chapter 4 (commencing with
18 Section 1870), the court investigator shall determine whether the
19 present condition of the conservatee is such that the terms of the
20 order should be modified or the order revoked.

21 (b) The findings of the court investigator, including the facts
22 upon which the findings are based, shall be certified in writing to
23 the court not less than 15 days prior to the date of review. A copy
24 of the report shall be mailed to the conservator and to the
25 attorneys of record for the conservator and conservatee at the
26 same time it is certified to the court.

27 (c) In the case of a limited conservatee, the court investigator
28 shall make a recommendation regarding the continuation or
29 termination of the limited conservatorship.

30 (d) The court investigator may personally visit the conservator
31 and other persons as may be necessary to determine whether the
32 present conservator is acting in the best interests of the
33 conservatee.

34 (e) The report required by this section shall be confidential and
35 shall be made available only to parties, persons given notice of
36 the petition who have requested the report or who have appeared
37 in the proceeding, their attorneys, and the court. The court shall
38 have discretion at any other time to release the report if it would
39 serve the interests of the conservatee. The clerk of the court shall

1 make provision for limiting disclosure of the report exclusively
2 to persons entitled thereto under this section.

3 SEC. 13. Section 2113 is added to the Probate Code, to read:

4 2113. A conservator shall accommodate the desires of the
5 conservatee ~~and facilitate the conservatee's involvement in~~
6 ~~decisionmaking~~, except to the extent that doing so would violate
7 the conservator's fiduciary duties to the conservatee or impose an
8 unreasonable expense on the conservatorship estate. ~~This~~
9 ~~provision does not require the conservator to facilitate the~~
10 ~~conservatee's involvement in a decision if that involvement~~
11 ~~would be contrary to the conservatee's best interests, considering~~
12 ~~the conservatee's mental or physical condition or other relevant~~
13 ~~factors.~~

14 SEC. 14. Section 2215 of the Probate Code is amended to
15 read:

16 2215. (a) Any of the following persons may appear at the
17 hearing to support or oppose the petition and may file written
18 objections to the petition:

- 19 (1) Any person required to be listed in the petition.
20 (2) Any creditor of the ward or conservatee or of the estate.
21 (3) Any other interested person.

22 (b) If the court determines that the transfer requested in the
23 petition will be for the best interests of the ward or conservatee,
24 it shall make an order transferring the proceeding to the other
25 county. If the ward or conservatee has moved *his or her*
26 *residence* to another county within the state in which any person
27 set forth in subdivision (b) of Section 1821 also resides, the court
28 shall make an order transferring the proceeding to that county,
29 *unless the court determines that the transfer will harm the*
30 *conservatee.*

31 SEC. 15. Section 2250 of the Probate Code is amended to
32 read:

33 2250. (a) On or after the filing of a petition for appointment
34 of a guardian or conservator, any person entitled to petition for
35 appointment of the guardian or conservator may file a petition for
36 appointment of:

- 37 (1) A temporary guardian of the person or estate or both.
38 (2) A temporary conservator of the person or estate or both.
39 (b) The petition shall state facts which establish good cause for
40 appointment of the temporary guardian or temporary conservator.

1 The court, upon that petition or other showing as it may require,
2 may appoint a temporary guardian of the person or estate or both,
3 or a temporary conservator of the person or estate or both, to
4 serve pending the final determination of the court upon the
5 petition for the appointment of the guardian or conservator.

6 (c) Unless the court for good cause otherwise orders, at least
7 five days before the hearing on the petition, notice of the hearing
8 shall be given as follows:

9 (1) Notice of the hearing shall be personally delivered to the
10 proposed ward if he or she is 12 years of age or older, to the
11 parent or parents of the proposed ward, and to any person having
12 a valid visitation order with the proposed ward that was effective
13 at the time of the filing of the petition. *Notice of the hearing shall*
14 *not be delivered to the proposed ward if he or she is under 12*
15 *years of age.* In a proceeding for temporary guardianship of the
16 person, evidence that a custodial parent has died or become
17 incapacitated, and that the petitioner is the nominee of the
18 custodial parent, may constitute good cause for the court to order
19 that this notice not be delivered.

20 (2) Notice of the hearing shall be personally delivered to the
21 proposed conservatee, and notice of the hearing shall be served
22 on the persons required to be named in the petition for
23 appointment of conservator.

24 (3) A copy of the petition for temporary appointment shall be
25 served with the notice of hearing.

26 (d) If a temporary guardianship is granted ex parte and the
27 hearing on the general guardianship petition is not to be held
28 within 30 days of the granting of the temporary guardianship, the
29 court shall set a hearing within 30 days to reconsider the
30 temporary guardianship. Notice of the hearing for
31 reconsideration of the temporary guardianship shall be provided
32 pursuant to Section 1511, except that the court may for good
33 cause shorten the time for the notice of the hearing.

34 (e) Visitation orders with the proposed ward granted prior to
35 the filing of a petition for temporary guardianship shall remain in
36 effect, unless for good cause the court orders otherwise.

37 (f) *The appointment of a guardian or conservator and the*
38 *appointment of a temporary guardian or conservator may be*
39 *requested in a single petition or by separate petitions. If the*
40 *appointment of both a guardian or conservator and also a*

1 *temporary guardian or conservator is requested in a single*
2 *petition, the court may not appoint a guardian or conservator*
3 *without the investigations and reviews otherwise required.*

4 (g) If a temporary conservatorship is granted ex parte, and a
5 petition to terminate the temporary conservatorship is filed more
6 than 15 days before the first hearing on the general petition for
7 appointment of conservator, the court shall set a hearing within
8 15 days of the filing of the petition for termination of the
9 temporary conservatorship to reconsider the temporary
10 conservatorship. Unless the court otherwise orders, notice of the
11 hearing on the petition to terminate the temporary
12 conservatorship shall be given at least 10 days prior to the
13 hearing. *If a petition to terminate the temporary conservatorship*
14 *is filed within 15 days before the first hearing on the general*
15 *petition for appointment of conservator, the court shall set the*
16 *hearing at the same time that the hearing on the general petition*
17 *is set.*

18 ~~(g)~~

19 (h) If the court suspends powers of the guardian or conservator
20 under Section 2334 or 2654 or under any other provision of this
21 division, the court may appoint a temporary guardian or
22 conservator to exercise those powers until the powers are
23 restored to the guardian or conservator or a new guardian or
24 conservator is appointed.

25 ~~(h)~~

26 (i) If for any reason a vacancy occurs in the office of guardian
27 or conservator, the court, on a petition filed under subdivision (a)
28 or on its own motion, may appoint a temporary guardian or
29 conservator to exercise the powers of the guardian or conservator
30 until a new guardian or conservator is appointed.

31 ~~(i)~~

32 (j) On or before ~~July 1, 2007~~ *January 1, 2008*, the Judicial
33 Council shall adopt a rule of court that establishes uniform
34 standards for good cause exceptions to the notice required by
35 subdivision (c), limiting those exceptions to only cases when
36 waiver of the notice is essential to protect the proposed
37 conservatee or ward, or the estate of the proposed conservatee or
38 ward, from ~~irreparable~~ *substantial* harm.

39 SEC. 16. Section 2250.1 is added to the Probate Code, to
40 read:

2250.1. (a) The proposed temporary conservatee shall attend the hearing except in the following cases:

(1)

(a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.

(2)

(b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.

(3)

(c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

(A)

(1) The proposed conservatee is not willing to attend the hearing.

(B)

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(C)

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(4)

(d) If the court determines that the proposed conservatee ~~cannot~~ *is unable or unwilling to* attend the hearing, and holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from imminent harm.

~~(b) Emotional or psychological instability is not good cause for the absence of the proposed temporary conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed temporary conservatee.~~

SEC. 17. Section 2250.2 is added to the Probate Code, to read:

2250.2. (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing, ~~or, if not feasible before the hearing, in no event later than 48 hours after the hearing: unless~~

1 *it is not feasible to do so, in which case the court investigator*
2 *shall comply with the requirements set forth in subdivision (b):*

3 (1) Interview the proposed conservatee personally. *The court*
4 *investigator also shall do all of the following:*

5 (A) Interview the petitioner and the proposed conservator, if
6 different from the petitioner.

7 (B) To the greatest extent possible, interview the proposed
8 conservatee's spouse or registered domestic partner, relatives
9 within the first degree, neighbors and, if known, close friends.

10 (C) To the extent possible, interview the proposed
11 conservatee's relatives within the second degree as set forth in
12 subdivision (b) of Section 1821 before the hearing.

13 (2) Inform the proposed conservatee of the contents of the
14 citation, of the nature, purpose, and effect of the proceeding, and
15 of the right of the proposed conservatee to oppose the
16 proceeding, to attend the hearing, to have the matter of the
17 establishment of the conservatorship tried by jury, to be
18 represented by legal counsel if the proposed conservatee so
19 chooses, and to have legal counsel appointed by the court if
20 unable to retain legal counsel.

21 (3) Determine whether it appears that the proposed
22 conservatee is unable to attend the hearing and, if able to attend,
23 whether the proposed conservatee is willing to attend the hearing.

24 (4) Determine whether the proposed conservatee wishes to
25 contest the establishment of the conservatorships.

26 (5) Determine whether the proposed conservatee objects to the
27 proposed conservator or prefers another person to act as
28 conservator.

29 (6) Report to the court, in writing, concerning all of the
30 foregoing.

31 (b) *If not feasible before the hearing, the court investigator*
32 *shall do all of the following within 48 hours after the hearing:*

33 (1) Interview the conservatee personally. *The court*
34 *investigator also shall do all of the following:*

35 (A) Interview the petitioner and the proposed conservator, if
36 different from the petitioner.

37 (B) To the greatest extent possible, interview the proposed
38 conservatee's spouse or registered domestic partner, relatives
39 within the first degree, neighbors and, if known, close friends.

1 (C) To the extent possible, interview the proposed
2 conservatee's relatives within the second degree as set forth in
3 subdivision (b) of Section 1821 before the hearing.

4 (2) Inform the conservatee of the nature, purpose, and effect of
5 the temporary conservatorship, as well as the right of the
6 conservatee to oppose the proposed general conservatorship, to
7 attend the hearing, to have the matter of the establishment of the
8 conservatorship tried by jury, to be represented by legal counsel
9 if the proposed conservatee so chooses, and to have legal counsel
10 appointed by the court if unable to retain legal counsel.

11 (c) If the investigator does not visit the conservatee until after
12 the hearing at which a temporary conservator was appointed, and
13 the conservatee objects to the appointment of the temporary
14 conservator, ~~the court shall set the matter for an expedited~~
15 ~~hearing within 10 days of the investigator's visit.~~ conservator, or
16 requests an attorney, the court investigator shall report this
17 information promptly, and in no event more than three court days
18 later, to the court. Upon receipt of that information, the court
19 may proceed with appointment of an attorney as provided in
20 Chapter 4 (commencing with Section 1470) of Part 1.

21 (d) If it appears to the court investigator that the temporary
22 conservatorship is inappropriate, the court investigator shall
23 immediately, and in no event more than two court days later,
24 provide a written report to the court so the court can consider
25 taking appropriate action on its own motion.

26 ~~SEC. 18. Section 2250.5 is added to the Probate Code, to~~
27 ~~read:~~

28 ~~2250.5. When a temporary conservatorship is granted, the~~
29 ~~court investigator shall comply with the requirements of~~
30 ~~subdivisions (a) and (b) of Section 1826. If it appears to the court~~
31 ~~investigator that the temporary conservatorship is inappropriate,~~
32 ~~the court investigator shall immediately provide a written report~~
33 ~~to the court so the court can consider taking appropriate action on~~
34 ~~its own motion. If the temporary conservatee informs the court~~
35 ~~investigator that the temporary conservatee objects to the~~
36 ~~proceeding, or requests an attorney, the court investigator shall~~
37 ~~report this information promptly to the court. Upon receipt of that~~
38 ~~information, the court may proceed with the appointment of an~~
39 ~~attorney as provided in Chapter 4 (commencing with Section~~
40 ~~1470) of Part 1.~~

1 ~~SEC. 19.~~

2 *SEC. 18.* Section 2253 of the Probate Code is amended to
3 read:

4 2253. (a) If a temporary conservator of the person proposes
5 to fix the residence of the conservatee at a place other than that
6 where the conservatee resided prior to the commencement of the
7 proceedings, that power shall be requested of the court in writing,
8 unless the change of residence is required of the conservatee by a
9 prior court order. The request shall be filed with the petition for
10 temporary conservatorship or, if a temporary conservatorship has
11 already been established, separately. The request shall specify in
12 particular the place to which the temporary conservator proposes
13 to move the conservatee, and the precise reasons why it is
14 believed that the conservatee will suffer irreparable harm if the
15 change of residence is not permitted, and why no means less
16 restrictive of the conservatee's liberty will suffice to prevent that
17 harm.

18 (b) Unless the court for good cause orders otherwise, the court
19 investigator shall do all of the following:

20 (1) Interview the conservatee personally.

21 (2) Inform the conservatee of the nature, purpose, and effect of
22 the request made under subdivision (a), and of the right of the
23 conservatee to oppose the request, attend the hearing, be
24 represented by legal counsel if the conservatee so chooses, and to
25 have legal counsel appointed by the court if unable to obtain
26 legal counsel.

27 (3) Determine whether the conservatee is unable to attend the
28 hearing because of medical inability and, if able to attend,
29 whether the conservatee is willing to attend the hearing.

30 (4) Determine whether the conservatee wishes to oppose the
31 request.

32 (5) Determine whether the conservatee wishes to be
33 represented by legal counsel at the hearing and, if so, whether the
34 conservatee has retained legal counsel and, if not, the name of an
35 attorney the proposed conservatee wishes to retain or whether the
36 conservatee desires the court to appoint legal counsel.

37 (6) If the conservatee does not plan to retain legal counsel and
38 has not requested the appointment of legal counsel by the court,
39 determine whether the appointment of legal counsel would be

1 helpful to the resolution of the matter or is necessary to protect
2 the interests of the conservatee.

3 (7) Determine whether the proposed change of place of
4 residence is required to prevent irreparable harm to the
5 conservatee and whether no means less restrictive of the
6 conservatee's liberty will suffice to prevent that harm.

7 (8) Report to the court in writing, at least two days before the
8 hearing, concerning all of the foregoing, including the
9 conservatee's express communications concerning representation
10 by legal counsel and whether the conservatee is not willing to
11 attend the hearing and does not wish to oppose the request.

12 (c) Within seven days of the date of filing of a temporary
13 conservator's request to remove the conservatee from his or her
14 previous place of residence, the court shall hold a hearing on the
15 request.

16 (d) The conservatee shall be present at the hearing except in
17 the following cases:

18 (1) Where the conservatee is unable to attend the hearing by
19 reason of medical inability. Emotional or psychological
20 instability is not good cause for the absence of the conservatee
21 from the hearing unless, by reason of that instability, attendance
22 at the hearing is likely to cause serious and immediate
23 physiological damage to the conservatee.

24 (2) Where the court investigator has reported to the court that
25 the conservatee has expressly communicated that the conservatee
26 is not willing to attend the hearing and does not wish to oppose
27 the request, and the court makes an order that the conservatee
28 need not attend the hearing.

29 (e) If the conservatee is unable to attend the hearing because
30 of medical inability, that inability shall be established (1) by the
31 affidavit or certificate of a licensed medical practitioner or (2) if
32 the conservatee is an adherent of a religion whose tenets and
33 practices call for reliance on prayer alone for healing and is under
34 treatment by an accredited practitioner of that religion, by the
35 affidavit of the practitioner. The affidavit or certificate is
36 evidence only of the conservatee's inability to attend the hearing
37 and shall not be considered in determining the issue of need for
38 the establishment of a conservatorship.

39 (f) At the hearing, the conservatee has the right to be
40 represented by counsel and the right to confront and

1 cross-examine any witness presented by or on behalf of the
2 temporary conservator and to present evidence on his or her own
3 behalf.

4 (g) The court may approve the request to remove the
5 conservatee from the previous place of residence only if the court
6 finds (1) that change of residence is required to prevent
7 irreparable harm to the conservatee and (2) that no means less
8 restrictive of the conservatee's liberty will suffice to prevent that
9 harm. If an order is made authorizing the temporary conservator
10 to remove the conservatee from the previous place of residence,
11 the order shall specify the specific place wherein the temporary
12 conservator is authorized to place the conservatee. The temporary
13 conservator may not be authorized to remove the conservatee
14 from this state unless it is additionally shown that such removal
15 is required to permit the performance of specified nonpsychiatric
16 medical treatment, consented to by the conservatee, which is
17 essential to the conservatee's physical survival. A temporary
18 conservator who willfully removes a temporary conservatee from
19 this state without authorization of the court is guilty of a felony.

20 (h) Subject to subdivision (e) of Section 2252, the court shall
21 also order the temporary conservator to take all reasonable steps
22 to preserve the status quo concerning the conservatee's previous
23 place of residence.

24 ~~SEC. 20.~~

25 *SEC. 19.* Section 2320 of the Probate Code is amended to
26 read:

27 2320. (a) Except as otherwise provided by statute, every
28 person appointed as guardian or conservator shall, before letters
29 are issued, give a bond approved by the court.

30 (b) The bond shall be for the benefit of the ward or
31 conservatee and all persons interested in the guardianship or
32 conservatorship estate and shall be conditioned upon the faithful
33 execution of the duties of the office, according to law, by the
34 guardian or conservator.

35 (c) Except as otherwise provided by statute, unless the court
36 increases or decreases the amount upon a showing of good cause,
37 the amount of a bond given by an admitted surety insurer shall be
38 the sum of all of the following:

39 (1) The value of the personal property of the estate.

(2) The probable annual gross income of all of the property of the estate.

(3) The sum of the probable annual gross payments from the following:

(A) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(B) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(C) Any other public entitlements of the ward or conservatee.

(4) The cost of recovery to collect on the bond, including attorney's fees and costs.

(d) If the bond is given by personal sureties, the amount of the bond shall be twice the amount required for a bond given by an admitted surety insurer.

(e) The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this article, except to the extent inconsistent with this article.

~~SEC. 21.~~

SEC. 20. Section 2321 of the Probate Code is amended to read:

2321. (a) Notwithstanding any other provision of law, the court in a conservatorship proceeding may not waive the filing of a bond or reduce the amount of bond required, without a good cause determination by the court which shall include a determination by the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding.

(b) In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

~~SEC. 22. Section 2340 of the Probate Code is amended to read:~~

~~2340. (a) A superior court shall not appoint a professional conservator or guardian or permit any person to serve as a professional conservator or guardian pursuant to Chapter 5 (commencing with Section 2350) or Chapter 6 (commencing with Section 2400), unless the professional conservator or guardian is licensed by the Department of Consumer Affairs pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code. If a conservator or guardian is exempted from licensure requirements under that chapter, the court may appoint that person to serve as a conservator or guardian without a professional conservator or guardian license by the Department of Consumer Affairs.~~

~~(b) No superior court may appoint a private professional trustee unless the trustee has filed the information required by Sections 2342 and 2343 with the clerk of the court in each county where a petition for appointment has been filed.~~

~~SEC. 23. Section 2342 of the Probate Code is amended to read:~~

~~2342. (a) All private professional trustees shall file annually with the clerk of the court a statement, under penalty of perjury, containing the following information:~~

~~(1) His or her educational background and professional experience.~~

~~(2) At least three professional references.~~

~~(3) The aggregate dollar value of all assets currently under the trustee's supervision.~~

~~(4) The trustee's addresses and telephone numbers for his or her place of business and place of residence.~~

~~(5) Whether the trustee has ever been removed for cause as trustee or has resigned as trustee in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers.~~

~~(6) The case names, court locations, and case numbers of all trust cases which are closed for which the private professional trustee served as the trustee.~~

~~(b) Upon filing of a petition for appointment, a private professional trustee shall state that he or she is a private professional trustee, and that the information required by this section is on file with the clerk of the court.~~

1 ~~(e) The clerk of the court shall order a background fingerprint~~
2 ~~check from the Department of Justice and may request a~~
3 ~~background fingerprint check from the Federal Bureau of~~
4 ~~Investigation on each private professional trustee. The~~
5 ~~background check shall include a record of all arrests resulting in~~
6 ~~conviction and all arrests for which final disposition is pending.~~
7 ~~The Department of Justice shall retain these fingerprints in its~~
8 ~~files and shall provide any subsequent arrest information to the~~
9 ~~clerk of the court pursuant to Section 11105.2 of the Penal Code~~
10 ~~until notified by the clerk of the court that the person is no longer~~
11 ~~serving in the capacity of a private professional trustee. The~~
12 ~~superior court shall review the background fingerprint check~~
13 ~~prior to the appointment of a private professional trustee. The~~
14 ~~court shall review annual updates to the criminal background~~
15 ~~check on persons currently serving in the capacity of a private~~
16 ~~professional trustee under the court's jurisdiction. The~~
17 ~~background fingerprint check may be dispensed with by the court~~
18 ~~if the petitioner was appointed as a private professional trustee,~~
19 ~~or served in the capacity of a private professional trustee, during~~
20 ~~the previous year and a background fingerprint check was~~
21 ~~previously made.~~

22 ~~(d) The information required by this section shall be made~~
23 ~~available to the court for any purpose, including the~~
24 ~~determination of the appropriateness of appointing or continuing~~
25 ~~the appointment of, or removing, the trustee, but shall otherwise~~
26 ~~be kept confidential.~~

27 ~~(e) This section applies to all private professional trustees~~
28 ~~regardless of the date of appointment.~~

29 ~~SEC. 24. Section 2342.5 of the Probate Code is repealed.~~

30 ~~SEC. 25. Section 2343 of the Probate Code is amended to~~
31 ~~read:~~

32 ~~2343. The clerk of the court shall charge each private~~
33 ~~professional trustee an annual filing fee that does not exceed the~~
34 ~~average trustee annual cost in complying with this article. This~~
35 ~~fee shall also include the cost of submitting the fingerprint card~~
36 ~~to the Department of Justice. This fee shall be distributed to the~~
37 ~~court in which it was collected.~~

38 ~~SEC. 26. Section 2344 of the Probate Code is repealed.~~

1 ~~SEC. 27.~~

2 ~~SEC. 21.~~ Section 2401 of the Probate Code is amended to
3 read:

4 2401. (a) The guardian or conservator, or limited conservator
5 to the extent specifically and expressly provided in the
6 appointing court's order, has the management and control of the
7 estate and, in managing and controlling the estate, shall use
8 ordinary care and diligence. What constitutes use of ordinary
9 care and diligence is determined by all the circumstances of the
10 particular estate.

11 (b) The guardian or conservator:

12 (1) Shall exercise a power to the extent that ordinary care and
13 diligence requires that the power be exercised.

14 (2) Shall not exercise a power to the extent that ordinary care
15 and diligence requires that the power not be exercised.

16 (c) Notwithstanding any other law, ~~the~~ a guardian or
17 conservator *who is not a trust company*, in exercising his or her
18 powers, may not hire or refer any business to an entity in which
19 he or she has a financial interest except upon authorization of the
20 court. Prior to authorization from the court, the guardian or
21 conservator shall disclose to the court in writing his or her
22 financial interest in the entity. For the purposes of this
23 subdivision, "financial interest" shall mean (1) an ownership
24 interest in a sole proprietorship, a partnership, or a closely held
25 corporation, or (2) an ownership interest of greater than 1 percent
26 of the outstanding shares in a publicly held corporation, or (3)
27 being an officer or a director of a corporation.

28 (d) *Notwithstanding any other law, a guardian or conservator*
29 *who is a trust company, in exercising his or her powers, may not*
30 *do either of the following, except upon authorization of the court:*

31 (1) *Obtain a financial benefit for the trust company or any of*
32 *its affiliates, other than in its capacity as guardian or*
33 *conservator.*

34 (2) *Invest in securities of the trust company or an affiliate, or*
35 *in a mutual fund, other than a mutual fund authorized in*
36 *paragraph (5) of subdivision (a) of Section 2574, registered*
37 *under the Investment Company Act of 1940 (Subchapter 1*
38 *commencing with Sec. 80a-1) of Chapter 2D of Title 15 of the*
39 *United States Code), to which the trust company or its affiliate*
40 *provides services, including, but not limited to, services as an*

1 *investment adviser, sponsor, distributor, custodian, agent,*
2 *registrar, administrator, servicer, or manager, and for which the*
3 *trust company or its affiliate receives compensation.*

4 *Prior to authorization from the court, the guardian or*
5 *conservator shall disclose to the court in writing the trust*
6 *company's financial interest.*

7 ~~SEC. 28.~~

8 SEC. 22. Section 2410 is added to the Probate Code, to read:

9 2410. On or before ~~July 1, 2007~~ *January 1, 2008*, the Judicial
10 Council, in consultation with the California Judges Association,
11 the California Association of Superior Court Investigators, the
12 California State Association of Public Administrators, Public
13 Guardians, and Public Conservators, ~~the California Bar~~
14 ~~Association~~ *State Bar of California*, the National Guardianship
15 Association, and the Association of Professional Geriatric Care
16 Managers, shall adopt a rule of court that shall require uniform
17 standards of conduct for actions that conservators and guardians
18 may take under this chapter on behalf of conservatees and wards
19 to ensure that the estate of conservatees or wards are maintained
20 and conserved as appropriate and to prevent risk of loss or harm
21 to the conservatees or wards. This rule shall include at a
22 minimum standards for determining the fees that may be charged
23 to conservatees or wards and standards for asset management.

24 ~~SEC. 29.~~

25 SEC. 23. Section 2610 of the Probate Code is amended to
26 read:

27 2610. (a) Within 90 days after appointment, or within any
28 further time as the court for reasonable cause upon ex parte
29 petition of the guardian or conservator may allow, the guardian
30 or conservator shall file with the clerk of the court and mail to the
31 conservatee ~~and the conservatee's relatives, as set forth in~~
32 ~~subdivision (b) of Section 1821,~~ *the conservatee's spouse or*
33 *domestic partner, the conservatee's relatives in the first degree,*
34 *and, if there are no such relatives, to the next closest relative,*
35 *along with notice of how to* ~~contest~~ *file an objection*, an
36 inventory and appraisal of the estate, made as of the date of the
37 appointment of the guardian or conservator.

38 (b) The guardian or conservator shall take and subscribe to an
39 oath that the inventory contains a true statement of all of the
40 estate of the ward or conservatee of which the guardian or

1 conservator has possession or knowledge. The oath shall be
2 endorsed upon or annexed to the inventory.

3 (c) The property described in the inventory shall be appraised
4 in the manner provided for the inventory and appraisal of estates
5 of decedents. The guardian or conservator may appraise the
6 assets that a personal representative could appraise under Section
7 8901.

8 (d) If a conservatorship is initiated pursuant to the
9 Lanterman-Petris-Short Act (Part 1 (commencing with Section
10 5000) of Division 5 of the Welfare and Institutions Code), and no
11 sale of the estate will occur:

12 (1) The inventory and appraisal required by subdivision (a)
13 shall be filed within 90 days after appointment of the
14 conservator.

15 (2) The property described in the inventory may be appraised
16 by the conservator and need not be appraised by a probate
17 referee.

18 (e) By ~~July 1, 2007~~ *January 1, 2008*, the Judicial Council shall
19 develop a form to effectuate the notice required in subdivision
20 (a).

21 ~~SEC. 30.~~

22 *SEC. 24.* Section 2620 of the Probate Code is amended to
23 read:

24 2620. (a) At the expiration of six months from the time of
25 appointment and thereafter not less frequently than annually,
26 unless otherwise ordered by the court to be more frequent, the
27 guardian or conservator shall present the accounting of the assets
28 of the estate of the ward or conservatee to the court for settlement
29 and allowance in the manner provided in Chapter 4 (commencing
30 with Section 1060) of Part 1 of Division 3. By ~~July 1, 2007~~
31 *January 1, 2008*, the Judicial Council, in consultation with the
32 California Judges Association, the California Association of
33 Superior Court Investigators, the California State Association of
34 Public Administrators, Public Guardians, and Public
35 Conservators, the ~~California Bar Association~~ *State Bar of*
36 *California*, and the California Society of Certified Public
37 Accountants, shall develop a standard accounting form, a
38 simplified accounting form, and rules for when the simplified
39 accounting form may be used. After ~~July 1, 2007~~ *January 1,*

1 2008, all accountings submitted pursuant to this section shall be
2 submitted on the Judicial Council form.

3 (b) The final court accounting of the guardian or conservator
4 following the death of the ward or conservatee shall include a
5 court accounting for the period that ended on the date of death
6 and a separate accounting for the period subsequent to the date of
7 death.

8 (c) Along with each court accounting, the guardian or
9 conservator shall file all supporting documents for all charges,
10 including, for all disbursing accounts, all original account
11 statements from any institution, as defined in Section 2890, or
12 any financial institution, as defined in Section 2892, and for all
13 nondisbursing accounts, the first and last original account
14 statement from any institution, as defined in Section 2890, or any
15 financial institution, as defined in Section 2892, for the period of
16 the accounting, in which moneys or other assets of the estate are
17 held or deposited, showing the balance through the period of the
18 court accounting. If the court accounting is the first court
19 accounting of the guardianship or conservatorship, the guardian
20 or conservator shall provide to the court the account statement
21 for the account balance immediately preceding the date the
22 conservator or guardian was appointed and the account statement
23 or statements for the account throughout the accounting period
24 until the closing date of the first court accounting. This
25 subdivision shall not apply to the public guardian if the money
26 belonging to the estate are pooled with money belonging to other
27 estates pursuant to Section 2940 and Article 3 (commencing with
28 Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in
29 this section shall affect any other duty or responsibility of the
30 public guardian with regard to managing money belonging to the
31 estate or filing accountings with the court.

32 (d) If any document to be filed with the court under this
33 section contains the ward's or conservatee's social security
34 number or any other personal information regarding the ward or
35 conservatee that would not ordinarily be disclosed in a court
36 accounting, an inventory and appraisal, or other nonconfidential
37 pleadings filed in the action, the account statement shall be
38 attached to a separate affidavit describing the character of the
39 document in proper form for filing, captioned "CONFIDENTIAL
40 FINANCIAL STATEMENT" in capital letters. Except as

1 otherwise ordered by the court, the clerk of the court shall keep
2 the document confidential except to the court and subject to
3 disclosure only upon an order of the court.

4 (e) Each accounting is subject to random and full review and
5 verification by the court. Each accounting that the court
6 determines may not be accurate shall be subject to a full review
7 and verification. The review and verification shall include a
8 review of all documents necessary to determine the accuracy of
9 the accounting. If the review and verification reveals any
10 material error, the court shall immediately do one of the
11 following:

12 (1) Remove the conservator or guardian as provided under
13 Chapter 9 (commencing with Section 2650).

14 (2) Hold a hearing to determine the severity of the error and
15 whether the conservator or guardian should be removed as
16 provided under Chapter 9 (commencing with Section 2650).

17 (3) Make a finding that the error was harmless.

18 ~~SEC. 31.~~

19 *SEC. 25.* Section 2620.2 of the Probate Code is amended to
20 read:

21 2620.2. (a) Whenever the conservator or guardian has failed
22 to file an accounting as required by Section 2620, the court shall
23 require that written notice be given to the conservator or guardian
24 and the attorney of record for the conservatorship or guardianship
25 directing the conservator or guardian to file an accounting and to
26 set the accounting for hearing before the court within 30 days of
27 the date of the notice or, if the conservator or guardian is a public
28 agency, within 45 days of the date of the notice.

29 (b) Failure to file the accounting within the time specified
30 under subdivision (a), or within 45 days of actual receipt of the
31 notice, whichever is later, shall constitute a contempt of the
32 authority of the court as described in Section 1209 of the Code of
33 Civil Procedure.

34 (c) If the conservator or guardian does not file an accounting
35 with all appropriate supporting documentation and set the
36 accounting for hearing as required by Section 2620, the court
37 shall do one or more of the following and shall report that action
38 to the board established pursuant to Section 6510 of the Business
39 and Professions Code:

1 (1) Remove the conservator or guardian as provided under
2 Article 1 (commencing with Section 2650) of Chapter 9 of Part 4
3 of Division 4.

4 (2) Issue and serve a citation requiring a guardian or
5 conservator who does not file a required accounting to appear
6 and show cause why the guardian or conservator should not be
7 punished for contempt. If the guardian or conservator purposely
8 evades personal service of the citation, the guardian or
9 conservator shall be immediately removed from office.

10 (3) Suspend the powers of the conservator or guardian and
11 appoint a temporary conservator or guardian, who shall take
12 possession of the assets of the conservatorship or guardianship,
13 investigate the actions of the conservator or guardian, and
14 petition for surcharge if this is in the best interest of the ward or
15 conservatee. Compensation for the temporary conservator or
16 guardian, and counsel for the temporary conservator or guardian,
17 shall be treated as a surcharge against the conservator or
18 guardian, and if unpaid shall be considered a breach of condition
19 of the bond.

20 (4) (A) *Appoint legal counsel to represent the ward or*
21 *conservatee if the court has not suspended the powers of the*
22 *conservator or guardian and appoint a temporary conservator or*
23 *guardian pursuant to paragraph (3). Compensation for the*
24 *counsel appointed for the ward or conservatee shall be treated as*
25 *a surcharge against the conservator or guardian, and if unpaid*
26 *shall be considered a breach of a condition on the bond, unless*
27 *for good cause shown the court finds that counsel for the ward or*
28 *conservatee shall be compensated according to Section 1470.*
29 *The court shall order the legal counsel to do one or more of the*
30 *following:*

31 (i) *Investigate the actions of the conservator or guardian, and*
32 *petition for surcharge if this is in the best interest of the ward or*
33 *conservatee.*

34 (ii) *Recommend to the court whether the conservator or*
35 *guardian should be removed.*

36 (iii) *Recommend to the court whether money or other property*
37 *in the estate should be deposited pursuant to Section 2453,*
38 *2453.5, 2454, or 2455, to be subject to withdrawal only upon*
39 *authorization of the court.*

1 (B) After resolution of the matters for which legal counsel was
2 appointed in subparagraph (A), the court shall terminate the
3 appointment of legal counsel, unless the court determines that
4 continued representation of the ward or conservatee and the
5 estate is necessary and reasonable.

6 (5) If the conservator or guardian is exempt from the licensure
7 requirements of Chapter 6 (commencing with Section 6500) of
8 Division 3 of the Business and Professions Code, upon ex parte
9 application or any notice as the court may require, extend the
10 time to file the accounting, not to exceed an additional 30 days
11 after the expiration of the deadline described in subdivision (a),
12 where the court finds there is good cause and that the estate is
13 adequately bonded. After expiration of any extensions, if the
14 accounting has not been filed, the court shall take action as
15 described in paragraphs (1) to (3), inclusive.

16 (d) Subdivision (c) does not preclude the court from
17 additionally taking any other appropriate action in response to a
18 failure to file a proper accounting in a timely manner.

19 ~~SEC. 32.~~

20 SEC. 26. Section 2623 of the Probate Code is amended to
21 read:

22 2623. (a) Except as provided in subdivision (b) of this
23 section, the guardian or conservator shall be allowed all of the
24 following:

25 (1) The amount of the reasonable expenses incurred in the
26 exercise of the powers and the performance of the duties of the
27 guardian or conservator (including, but not limited to, the cost of
28 any surety bond furnished, reasonable attorney's fees, and such
29 compensation for services rendered by the guardian or
30 conservator of the person as the court determines is just and
31 reasonable).

32 (2) Such compensation for services rendered by the guardian
33 or conservator as the court determines is just and reasonable.

34 (3) All reasonable disbursements made before appointment as
35 guardian or conservator.

36 (4) In the case of termination other than by the death of the
37 ward or conservatee, all reasonable disbursements made after the
38 termination of the guardianship or conservatorship but prior to
39 the discharge of the guardian or conservator by the court.

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

~~SEC. 33.~~

SEC. 27. Section 2640 of the Probate Code is amended to read:

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to

1 the guardian or conservator of the person or estate or both. The
2 compensation allowed to the guardian or conservator of the
3 person, the guardian or conservator of the estate, and to the
4 attorney may, in the discretion of the court, include compensation
5 for services rendered before the date of the order appointing the
6 guardian or conservator. The compensation allowed shall
7 thereupon be charged to the estate. Legal services for which the
8 attorney may be compensated include those services rendered by
9 any paralegal performing legal services under the direction and
10 supervision of an attorney. The petition or application for
11 compensation shall set forth the hours spent and services
12 performed by the paralegal.

13 (d) Notwithstanding the provisions of subdivision (c), the
14 guardian or conservator shall not be compensated from the estate
15 for any costs or fees that the guardian or conservator incurred in
16 unsuccessfully opposing a petition, or other request or action,
17 made by or on behalf of the ward or conservatee, unless the court
18 determines that the opposition was made in good faith, based on
19 the best interests of the ward or conservatee.

20 ~~SEC. 34.~~

21 *SEC. 28.* Section 2640.1 of the Probate Code is amended to
22 read:

23 2640.1. (a) If a person has petitioned for the appointment of
24 a particular conservator and another conservator was appointed
25 while the petition was pending, but not before the expiration of
26 90 days from the issuance of letters, the person who petitioned
27 for the appointment of a conservator but was not appointed and
28 that person's attorney may petition the court for an order fixing
29 and allowing compensation and reimbursement of costs,
30 provided that the court determines that the petition was filed in
31 the best interest of the conservatee.

32 (b) Notice of the hearing shall be given for the period and in
33 the manner provided in Chapter 3 (commencing with Section
34 1460) of Part 1.

35 (c) Upon the hearing, the court shall make an order to allow
36 both of the following:

37 (1) Any compensation or costs requested in the petition the
38 court determines is just and reasonable to the person who
39 petitioned for the appointment of a conservator but was not
40 appointed, for his or her services rendered in connection with and

1 to facilitate the appointment of a conservator, and costs incurred
2 in connection therewith.

3 (2) Any compensation or costs requested in the petition the
4 court determines is just and reasonable to the attorney for that
5 person, for his or her services rendered in connection with and to
6 facilitate the appointment of a conservator, and costs incurred in
7 connection therewith.

8 Any compensation and costs allowed shall be charged to the
9 estate of the conservatee. If a conservator of the estate is not
10 appointed, but a conservator of the person is appointed, the
11 compensation and costs allowed shall be ordered by the court to
12 be paid from property belonging to the conservatee, whether held
13 outright, in trust, or otherwise.

14 (d) It is the intent of the Legislature for this section to have
15 retroactive effect.

16 ~~SEC. 35.~~

17 *SEC. 29.* Section 2641 of the Probate Code is amended to
18 read:

19 2641. (a) At any time permitted by Section 2640 and upon
20 the notice therein prescribed, the guardian or conservator of the
21 person may petition the court for an order fixing and allowing
22 compensation for services rendered to that time.

23 (b) Upon the hearing, the court shall make an order allowing
24 any compensation the court determines is just and reasonable to
25 the guardian or conservator of the person for services rendered.
26 The compensation allowed to the guardian or conservator of the
27 person may, in the discretion of the court, include compensation
28 for services rendered before the date of the order appointing the
29 guardian or conservator. The compensation allowed shall
30 thereupon be charged against the estate.

31 (c) The guardian or conservator shall not be compensated from
32 the estate for any costs or fees that the guardian or conservator
33 incurred in unsuccessfully opposing a petition, or other request or
34 action, made by or on behalf of the ward or conservatee, unless
35 the court determines that the opposition was made in good faith,
36 based on the best interests of the ward or conservatee.

37 ~~SEC. 36.~~

38 *SEC. 30.* Section 2653 of the Probate Code is amended to
39 read:

1 2653. (a) The guardian or conservator, the ward or
2 conservatee, the spouse of the ward or the spouse or domestic
3 partner of the conservatee, any relative or friend of the ward or
4 conservatee, and any interested person may appear at the hearing
5 and support or oppose the petition.

6 (b) If the court determines that cause for removal of the
7 guardian or conservator exists, the court may remove the
8 guardian or conservator, revoke the letters of guardianship or
9 conservatorship, and enter judgment accordingly and, in the case
10 of a guardianship or conservatorship of the estate, order the
11 guardian or conservator to file an accounting and to surrender the
12 estate to the person legally entitled thereto. If the guardian or
13 conservator fails to file the accounting as ordered, the court may
14 compel the accounting pursuant to Section 2620.2.

15 (c) If the court removes the guardian or conservator for cause,
16 as described in subdivisions (a) to (g), inclusive, of Section 2650
17 or Section 2655, both of the following shall apply:

18 (1) The court shall award the petitioner the costs of the
19 petition and other expenses and costs of litigation, including
20 attorney's fees, incurred under this article.

21 (2) The guardian or conservator may not deduct from, or
22 charge to, the estate his or her costs of litigation, and is
23 personally liable for those costs and expenses.

24 ~~SEC. 37.~~

25 *SEC. 31.* Section 2701 of the Probate Code is amended to
26 read:

27 2701. (a) A request for special notice may be modified or
28 withdrawn in the same manner as provided for the making of the
29 initial request.

30 (b) A new request for special notice may be served and filed at
31 any time as provided in the case of an initial request.

32 ~~SEC. 38. Section 2850 of the Probate Code is amended to~~
33 ~~read:~~

34 ~~2850. (a) (1) The Department of Consumer Affairs shall~~
35 ~~maintain a Statewide Registry and shall make all information in~~
36 ~~the registry available to the court for any purpose, but shall~~
37 ~~otherwise keep this information confidential, except as provided~~
38 ~~in this section.~~

39 ~~(2) (A) On request, the registry shall disclose to the public the~~
40 ~~following:~~

1 ~~(i) Whether an individual is or is not registered with the~~
2 ~~Statewide Registry.~~

3 ~~(ii) Whether the Statewide Registry contains any information~~
4 ~~filed pursuant to subdivision (d) for a specific individual~~
5 ~~regarding his or her duties as a trustee.~~

6 ~~(iii) The educational background and professional experience~~
7 ~~of an individual registered with the Statewide Registry.~~

8 ~~(B) Upon written request by a member of the public, the~~
9 ~~registry shall provide access to any information filed with the~~
10 ~~registry pursuant to subdivision (d) regarding a trustee.~~

11 ~~(3) Except as otherwise provided in Section 2854, all persons~~
12 ~~who wish to serve as a trustee or who are currently serving as a~~
13 ~~trustee shall register with the Statewide Registry and shall~~
14 ~~reregister every three years thereafter. "Registration" means the~~
15 ~~filing of a declaration pursuant to subdivision (b).~~

16 ~~(b) All trustees required to file information with the clerk of~~
17 ~~the court pursuant to Section 2340 or required to register~~
18 ~~pursuant to this chapter shall file a signed declaration with the~~
19 ~~Statewide Registry. A person who signs a declaration pursuant to~~
20 ~~this subdivision asserting the truth of any material matter which~~
21 ~~he or she knows to be false is guilty of a misdemeanor~~
22 ~~punishable by imprisonment for up to one year in a county jail, or~~
23 ~~a fine of not more than two thousand dollars (\$2,000), or by both~~
24 ~~that fine and imprisonment. The declaration shall contain the~~
25 ~~following information:~~

26 ~~(1) Full name.~~

27 ~~(2) Professional name, if different from paragraph (1).~~

28 ~~(3) Business address.~~

29 ~~(4) Business telephone number or numbers.~~

30 ~~(5) His or her educational background and professional~~
31 ~~experience, including verification of any college or graduate~~
32 ~~degree claimed.~~

33 ~~(6) The names of the current trusts administered by the trustee.~~

34 ~~(7) The aggregate dollar value of all assets currently under the~~
35 ~~trustee's supervision.~~

36 ~~(8) Whether he or she has ever been removed for cause or~~
37 ~~resigned as trustee in a specific case, the circumstances of that~~
38 ~~removal or resignation, and the case names, court locations, and~~
39 ~~case numbers.~~

1 ~~(e) The Department of Consumer Affairs may charge a~~
2 ~~reasonable fee to persons registering and reregistering with the~~
3 ~~Statewide Registry for the cost of that registration. The~~
4 ~~Department of Consumer Affairs shall issue a certificate of~~
5 ~~registration to each registrant.~~

6 ~~(d) If a court makes a finding that a trustee has not properly~~
7 ~~performed the duties of a trustee, and that finding results in an~~
8 ~~order for a surcharge for other than nominal damages or for~~
9 ~~removal of the trustee, the court clerk shall forward a copy of the~~
10 ~~court's findings and order to the Statewide Registry, which shall~~
11 ~~include this information in the file of that trustee.~~

12 ~~SEC. 39. Section 2851 of the Probate Code is amended to~~
13 ~~read:~~

14 ~~2851. (a) A court may not appoint a person as a trustee~~
15 ~~unless that person, if required to register under Section 2850, is~~
16 ~~registered with the Statewide Registry.~~

17 ~~(b) A trustee required to register under Section 2850 who has~~
18 ~~not registered with the Statewide Registry on or before January 1,~~
19 ~~2005, shall be removed as a trustee by the court, unless the court~~
20 ~~finds reasonable grounds not to do so. If the court finds~~
21 ~~reasonable grounds exist for not removing the trustee for failing~~
22 ~~to register on or before January 1, 2005, the court shall order the~~
23 ~~trustee to register with the Statewide Registry within 90 days of~~
24 ~~the court's order and shall remove the trustee if the trustee has~~
25 ~~failed to register at the end of the 90-day period.~~

26 ~~(c) In appointing, continuing the appointment, or removing a~~
27 ~~person as trustee, the court shall examine and consider the~~
28 ~~information contained in the Statewide Registry for that person.~~
29 ~~The information contained in the Statewide Registry shall be~~
30 ~~made available to the court for this purpose, but shall otherwise~~
31 ~~be kept confidential, except as provided by law.~~

32 ~~SEC. 40. Section 2852 of the Probate Code is amended to~~
33 ~~read:~~

34 ~~2852. (a) Any person required to register under Section 2850~~
35 ~~who serves as a trustee without being registered with the~~
36 ~~Statewide Registry, who commits fraud in registering, who~~
37 ~~falsely asserts that he or she is registered, or who makes false~~
38 ~~claims or representations as to the nature of his or her file~~
39 ~~contained in the registry, shall be subject to a civil penalty in the~~
40 ~~amount of two hundred dollars (\$200) for the first violation and a~~

1 civil penalty in the amount of five hundred dollars (\$500) for
2 each subsequent violation, to be assessed and collected in a civil
3 action brought by the Department of Consumer Affairs. All civil
4 penalties collected shall be deposited in the General Fund. A
5 person who lawfully delays registration pursuant to subdivision
6 (b) of Section 2851 shall not be subject to a civil penalty for
7 serving as a trustee without being registered until the time that
8 subdivision (b) of Section 2851 authorizes his or her removal for
9 failure to register.

10 (b) Any court that removes a trustee for cause, and any court
11 that has accepted the resignation of a trustee, shall notify the
12 Statewide Registry of that removal or resignation and the reason
13 therefor. The courts shall consider that information prior to the
14 appointment of a person or entity pursuant to a subsequent
15 petition for appointment as trustee.

16 SEC. 41. Section 2853 of the Probate Code is amended to
17 read:

18 2853. Notwithstanding any other provision of this chapter, in
19 cases of urgency, where circumstances and justice warrant the
20 appointment of a trustee and time is limited, a court may appoint
21 a person as trustee without consulting the Statewide Registry or
22 requiring registration prior to appointment.

23 SEC. 42. Section 2854 of the Probate Code is amended to
24 read:

25 2854. (a) This chapter does not apply to any trustee when the
26 person is related to the trustor by blood, marriage, adoption,
27 registered domestic partnership, or a relationship that satisfies the
28 requirements of subdivision (a) and paragraphs (1) to (4),
29 inclusive, and paragraph (6) of subdivision (b) of Section 297 of
30 the Family Code.

31 (b) This chapter does not apply to any trustee who is serving
32 for the benefit of not more than three people or not more than
33 three families, or a combination of people or families that does
34 not total more than three. The number of trust beneficiaries does
35 not count for the purposes of calculating if a trustee falls within
36 this exclusion. A trust excluded under subdivision (a) or (b) does
37 not count for the purpose of calculating if a trustee falls within
38 this exclusion. For the purposes of this subdivision, family means
39 people who are related by blood, marriage, adoption, registered
40 domestic partnership, or a relationship that satisfies the

1 ~~requirements of subdivision (a) and paragraphs (1) to (4),~~
2 ~~inclusive, and paragraph (6) of subdivision (b) of Section 297 of~~
3 ~~the Family Code.~~

4 ~~(e) This chapter does not apply to a trustee who is any of the~~
5 ~~following:~~

6 ~~(1) Trust companies, as defined in Section 83.~~

7 ~~(2) FDIC-insured institutions, their holding companies,~~
8 ~~subsidiaries, or affiliates. For the purposes of this paragraph,~~
9 ~~“affiliate” means any entity that shares an ownership interest~~
10 ~~with or that is under the common control of, the FDIC-insured~~
11 ~~institution.~~

12 ~~(3) Employees of any entity listed in paragraph (1) or (2)~~
13 ~~while serving as trustees in the scope of their duties.~~

14 ~~SEC. 43. Section 2855 of the Probate Code is amended to~~
15 ~~read:~~

16 ~~2855. It is the intent of the Legislature that:~~

17 ~~(a) Counties that provide for registration of trustees continue~~
18 ~~to do so, and that the Statewide Registry not replace county~~
19 ~~registration.~~

20 ~~(b) Courts maintain oversight over the complaint process in~~
21 ~~order to safeguard the reputations of trustees against unfounded~~
22 ~~complaints.~~

23 ~~(c) A trustee who is reregistering with the Statewide Registry,~~
24 ~~after having met all of the requirements stated in Section 2850,~~
25 ~~not be required to reverify previously claimed college or graduate~~
26 ~~degrees.~~

27 ~~SEC. 44.~~

28 ~~SEC. 32. Section 2920 of the Probate Code is amended to~~
29 ~~read:~~

30 ~~2920. (a) If any person domiciled in the county requires a~~
31 ~~guardian or conservator and there is no one else who is qualified~~
32 ~~and willing to act and whose appointment as guardian or~~
33 ~~conservator would be in the then either of the following shall~~
34 ~~apply:~~

35 ~~(1) The best interest of the person, the public guardian shall~~
36 ~~apply for appointment as guardian or conservator of the person,~~
37 ~~the estate, or the person and estate, if there is an imminent threat~~
38 ~~to the person’s health or safety or the person’s estate.~~

1 (2) *The public guardian may apply for appointment as*
2 *guardian or conservator of the person, the estate, or the person*
3 *and estate in all other cases.*

4 (b) The public guardian shall apply for appointment as
5 guardian or conservator of the person, the estate, or the person
6 and estate, if the court so orders. The court may make an order
7 under this subdivision on motion of an interested person or on the
8 court's own motion in a pending proceeding or in a proceeding
9 commenced for that purpose. The court shall order the public
10 guardian to apply for appointment as guardian or conservator of
11 the person, the estate, or the person and estate, on behalf of any
12 person domiciled in the county who appears to require a guardian
13 or conservator, if it appears that there is no one else who is
14 qualified and willing to act, and if that appointment as guardian
15 or conservator appears to be in the best interest of the person,
16 *unless prior to application it is discovered that there is someone*
17 *else who is qualified and willing to act as guardian or*
18 *conservator.* The court shall not make an order under this
19 subdivision except after notice to the public guardian for the
20 period and in the manner provided for in Chapter 3 (commencing
21 with Section 1460) of Part 1, consideration of the alternatives,
22 and a determination by the court that the appointment is
23 necessary. The notice and hearing under this subdivision may be
24 combined with the notice and hearing required for appointment
25 of a guardian or conservator.

26 ~~(e) The public guardian shall visit each proposed conservatee~~
27 ~~or ward within 48 hours of receiving notice of the need for~~
28 ~~assistance.~~

29 (c) *The public guardian shall begin an investigation within*
30 *two business days of receiving a referral for conservatorship or*
31 *guardianship.*

32 ~~SEC. 45.~~

33 SEC. 33. Division 8.7 (commencing with Section 9800) is
34 added to the Welfare and Institutions Code, to read:

35
36 DIVISION 8.7. CONSERVATORSHIP OMBUDSMAN
37

38 9800. There is within the California Department of Aging an
39 Office of the Conservatorship Ombudsman.

1 9801. (a) The office shall be under the direction of a chief
2 executive officer who shall be known as the Conservatorship
3 Ombudsman. The Conservatorship Ombudsman shall be
4 appointed by the director and shall report directly to the director.
5 He or she shall devote his or her entire time to the duties of his or
6 her position, and shall receive the salary otherwise provided by
7 law.

8 (b) Any vacancy occurring in the position of Conservatorship
9 Ombudsman shall be filled in the same manner as the original
10 appointment. Whenever the Conservatorship Ombudsman dies,
11 resigns, becomes ineligible to serve for any reason, or is removed
12 from office, the director shall appoint an acting Conservatorship
13 Ombudsman within 30 days, who shall serve until the
14 appointment and qualification of the Conservatorship
15 Ombudsman's successor, but in no event longer than four months
16 from the occurrence of the vacancy. The acting Conservatorship
17 Ombudsman shall exercise, during this period, all of the powers
18 and duties of the Conservatorship Ombudsman pursuant to this
19 chapter.

20 9802. (a) The Conservatorship Ombudsman shall possess at
21 least a bachelor's degree, and have a minimum of five years'
22 professional experience that shall include at least fiduciary asset
23 management and in at least three of the following four areas:

24 (1) Gerontology, long-term care, or other relevant social
25 services or health services programs.

26 (2) The legal system and the legislative process.

27 (3) Dispute or problem resolution techniques, including
28 investigation, mediation, and negotiation.

29 (4) Organizational management and program administration.

30 (b) The professional experience described in subdivision (a)
31 requires any reasonable combination of the fields described in
32 that subdivision for a total of five years, and does not require five
33 years' experience in each area. At the discretion of the director, a
34 master's or doctorate degree relevant to a field described in
35 subdivision (a) may be substituted for one or two years,
36 respectively, of professional experience. However, the
37 applicant's professional experience and field of study leading to
38 the master's or doctorate degree shall, nevertheless, include all of
39 the fields described in subdivision (a).

1 9803. The Conservatorship Ombudsman may employ
2 technical experts and other employees that, in his or her
3 judgment, are necessary for the conduct of the business of the
4 office.

5 9804. The office may solicit and receive funds, gifts, and
6 contributions to support the operations and programs of the
7 office. The office may form a foundation eligible to receive
8 tax-deductible contributions to support the operations and
9 programs of the office. The office shall not solicit or receive any
10 funds, gifts, or contributions if the solicitation or receipt would
11 jeopardize the independence and objectivity of the office.

12 9805. (a) No representative of the office shall be held liable
13 for good faith performance of responsibilities under this chapter.

14 (b) No discriminatory, disciplinary, or retaliatory action shall
15 be taken against any person for any communication made, or
16 information given or disclosed, to aid the office in carrying out
17 its duties and responsibilities, unless the same was done
18 maliciously or without good faith. This subdivision is not
19 intended to infringe on the rights of the employer to supervise,
20 discipline, or terminate an employee for other reasons.

21 (c) All communications by a representative of the office, if
22 reasonably related to the requirements of that individual's
23 responsibilities under this chapter and done in good faith, shall be
24 privileged, and that privilege shall serve as a defense to any
25 action in libel or slander.

26 (d) Any representative of the office shall be exempt from
27 being required to testify in court as to any confidential matters,
28 except as the court may deem necessary to enforce the provisions
29 of this chapter.

30 9806. The department shall be responsible for establishing a
31 statewide reporting system to collect and analyze data relative to
32 complaints regarding conservatorships for the purpose of
33 identifying and resolving significant problems. The department
34 shall submit the data annually to the California Board of
35 ~~Conservators and Guardians~~ *Professional Fiduciaries*, the
36 Judicial Council, and the Legislature.

37 9807. (a) The office shall provide to the public information
38 and assistance regarding conservators.

39 (b) The office shall take complaints and concerns
40 communicated by, or on behalf of, conservatees, and review the

1 complaints to determine if they require further investigation.
2 Complaint review shall be done in an objective manner to
3 ascertain the pertinent facts. If the office determines that further
4 investigation is required, the office shall refer the complaint to
5 the relevant court, the Judicial Council, the California Board of
6 ~~Conservators and Guardians~~ *Professional Fiduciaries*, the
7 Attorney General, the relevant district attorney, or the relevant
8 office of Adult Protective Services, as appropriate, which shall
9 investigate the complaint, take all appropriate steps as warranted
10 by the investigations, and report its findings and actions to the
11 office in a timely manner.

12 (c) At the conclusion of any review and investigation of a
13 complaint, as set forth in subdivision (b), the resolution shall be
14 reported to the complainant. If the office does not seek resolution
15 of a complaint, the complainant shall be notified in writing of the
16 decision not to investigate and the reasons for the decision.

17 9808. The Conservatorship Ombudsman shall have access to
18 any record of a state or local governmental agency that is
19 necessary to carry out his or her responsibilities under this
20 chapter, including records rendered confidential.

21 9809. All records and files of the office relating to any
22 complaint made pursuant to this chapter and the identities of
23 complainants, witnesses, patients, or residents shall remain
24 confidential, unless disclosure is required by court order, or the
25 release of the information is to a law enforcement agency, public
26 protective services agency, or a licensing or certification agency
27 in a manner consistent with federal laws and regulations.

28 ~~SEC. 46. Sections 9, 10, 27 to 32, inclusive, 36, and 43 to 48,~~
29 ~~inclusive, of this act shall become operative on January 1, 2008.~~

30 ~~SEC. 47.~~

31 *SEC. 34.* This act shall become operative only if Senate Bill
32 1116, Senate Bill 1550, and Senate Bill 1716 of the 2005–06
33 Regular Session are enacted and become effective on or before
34 January 1, 2007.